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9 PENSKE LOGISTICS, LLC, erroneously sued as "PENSKE TRUCK LEASING
10 CO., L.P. or PENSKE LOGISTICS, LLP"

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16 Attorneys for Plaintiffs
17 DOLORES ROCHA and DEBRA ELLIS

18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
20

21 DOLORES ROCHA, deceased, by her	}	Case No.: 5:15-cv-00736-R-KK
22 successor in interest JOHN ROCHA,		
23 and DEBRA ELLIS, an individual,		
24 Plaintiff,	}	ORDER RE STIPULATED
25 vs.		PROTECTIVE ORDER
26 PENSKE TRUCK LEASING CO.,L.P.,		
27 or PENSKE LOGISTICS LLP, a	}	
28 corporation, and DOES 1 through 50,		
inclusive,	}	
Defendants.		

1 Upon consideration of the stipulation of plaintiffs Dolores Rocha, deceased,
2 by her successor in interest John Rocha, and Debra Ellis (“Plaintiffs”) and
3 defendant Penske Logistics, LLC (“Penske”), by and through their respective
4 counsel of record (collectively, “the parties”), for the entry of a protective order,
5 the Court hereby orders the following:

6 1. PURPOSES AND GOOD CAUSE STATEMENT

7 Disclosure and discovery activity in this action is likely to involve the
8 production of (i) proprietary business information concerning Penske’s operations;
9 (ii) proprietary business information concerning Penske’s personnel and
10 operational policies and procedures; and (iii) employment, personnel and/or
11 disciplinary records of non-party Penske employees. Good cause exists for the
12 issuance of a protective order because (i) public disclosure of Penske’s proprietary
13 business information would create a competitive disadvantage for Penske and (ii)
14 public disclosure of confidential information concerning Penske employees would
15 violate the privacy rights of third parties. Further, redaction of personal
16 identifying information of third parties would not adequately protect Penske from
17 potential liability for the disclosure of confidential information relating to third
18 parties. Good cause therefore exists for special protection of the categories of
19 documents denominated in this paragraph, whether redacted or not, from public
20 disclosure and from use for any purpose other than prosecuting this litigation.

21 Accordingly, the parties hereby stipulate to and petition the court to
22 enter the following Stipulated Protective Order. The parties acknowledge that this
23 Order does not confer blanket protections on all disclosures or responses to
24 discovery and that the protection it affords from public disclosure and use extends
25 only to the limited information or items that are entitled to confidential treatment
26 under the applicable legal principles. The parties further acknowledge, as set forth
27 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
28 to file confidential information under seal; Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and the standards that will be applied when a
2 party seeks permission from the court to file material under seal.

3 **2. DEFINITIONS**

4 2.1 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.2 “CONFIDENTIAL” Information or Items: information
7 (regardless of how it is generated, stored or maintained) or tangible things that
8 qualify for protection under Federal Rule of Civil Procedure 26(c).

9 2.3 Counsel (without qualifier): Outside Counsel of Record and
10 House Counsel (as well as their support staff).

11 2.4 Designating Party: a Party or Non-Party that designates
12 information or items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.5 Disclosure or Discovery Material: all items or information,
15 regardless of the medium or manner in which it is generated, stored, or maintained
16 (including, among other things, testimony, transcripts, and tangible things), that
17 are produced or generated in disclosures or responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in
19 a matter pertinent to the litigation who has been retained by a Party or its counsel
20 to serve as an expert witness or as a consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this
22 action. House Counsel does not include Outside Counsel of Record or any other
23 outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation,
25 association, or other legal entity not named as a Party to this action.

26 2.9 Outside Counsel of Record: attorneys who are not employees
27 of a party to this action but are retained to represent or advise a party to this action
28 and have appeared in this action on behalf of that party or are affiliated with a law

1 firm which has appeared on behalf of that party.

2 2.10 Party: any party to this action, including all of its officers,
3 directors, employees, consultants, retained experts, and Outside Counsel of
4 Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces
6 Disclosure or Discovery Material in this action.

7 2.12 Professional Vendors: persons or entities that provide
8 litigation support services (e.g., photocopying, videotaping, translating, preparing
9 exhibits or demonstrations, and organizing, storing, or retrieving data in any form
10 or medium) and their employees and subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that
12 the Producing Party in good faith identifies as falling within the categories of
13 information denominated in paragraph 1 by designating that material as
14 “CONFIDENTIAL.”

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not
19 only Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.
23 However, the protections conferred by this Stipulation and Order do not cover the
24 following information: (a) any information that is in the public domain at the time
25 of disclosure to a Receiving Party or becomes part of the public domain after its
26 disclosure to a Receiving Party as a result of publication not involving a violation
27 of this Order, including becoming part of the public record through trial or
28 otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source
2 who obtained the information lawfully and under no obligation of confidentiality
3 to the Designating Party. Any use of Protected Material at trial shall be governed
4 by a separate agreement or order.

5 4. DURATION

6 The confidentiality obligations imposed by this Order shall remain in
7 effect until the time of trial. If this matter proceeds to trial, information
8 designated as CONFIDENTIAL and/or kept and maintained pursuant to the terms
9 of this Protective Order will become public and will be presumptively available to
10 all members of the public, including the press, unless compelling reasons
11 supported by specific factual findings to proceed otherwise are demonstrated to
12 the district judge in advance of trial.

13 If this matter does not proceed to trial, the confidentiality obligations
14 imposed by this Order shall remain in effect even after final disposition until a
15 Designating Party agrees otherwise in writing or a court order otherwise directs.
16 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
17 defenses in this action, with or without prejudice and (2) final judgment herein
18 after the completion and exhaustion of all appeals, rehearings, remands, or
19 reviews of this action, including the time limits for filing any motions or
20 applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for
23 Protection. Each Party or Non-Party that designates information or items for
24 protection under this Order must take care to limit any such designation to specific
25 material that qualifies under the appropriate standards. The Designating Party
26 must designate for protection only those parts of material, documents, items, or
27 oral or written communications that qualify – so that other portions of the
28 material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited.
 3 Designations that are shown to be clearly unjustified or that have been made for
 4 an improper purpose (e.g., to unnecessarily encumber or retard the case
 5 development process or to impose unnecessary expenses and burdens on other
 6 parties) expose the Designating Party to sanctions. If it comes to a Designating
 7 Party's attention that information or items that it designated for protection do not
 8 qualify for protection, that Designating Party must promptly notify all other
 9 Parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise
 11 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
 12 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
 13 for protection under this Order must be clearly so designated before the material is
 14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
 17 documents, but excluding transcripts of depositions or other pretrial or trial
 18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
 19 each page that contains protected material. If only a portion or portions of the
 20 material on a page qualifies for protection, the Producing Party also must clearly
 21 identify the protected portion(s) (e.g., by making appropriate markings in the
 22 margins). A Party or Non-Party that makes original documents or materials
 23 available for inspection need not designate them for protection until after the
 24 inspecting Party has indicated which material it would like copied and produced.
 25 During the inspection and before the designation, all of the material made
 26 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
 27 Party has identified the documents it wants copied and produced, the Producing
 28 Party must determine which documents, or portions thereof, qualify for protection

1 under this Order. Then, before producing the specified documents, the Producing
 2 Party must affix the “CONFIDENTIAL” legend to each page that contains
 3 Protected Material. If only a portion or portions of the material on a page qualifies
 4 for protection, the Producing Party also must clearly identify the protected
 5 portion(s) (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in deposition or in other pretrial or trial
 7 proceedings, that the Designating Party identify on the record, before the close of
 8 the deposition, hearing, or other proceeding, all protected testimony.

9 (c) for information produced in some form other than documentary
 10 and for any other tangible items, that the Producing Party affix in a prominent
 11 place on the exterior of the container or containers in which the information or
 12 item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
 13 information or item warrant protection, the Producing Party, to the extent
 14 practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an
 16 inadvertent failure to designate qualified information or items does not, standing
 17 alone, waive the Designating Party’s right to secure protection under this Order
 18 for such material. Upon timely correction of a designation, the Receiving Party
 19 must make reasonable efforts to assure that the material is treated in accordance
 20 with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge
 23 a designation of confidentiality prior to the close of discovery in this action.
 24 Unless a prompt challenge to a Designating Party’s confidentiality designation is
 25 necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 26 burdens, or a significant disruption or delay of the litigation, a Party does not
 27 waive its right to challenge a confidentiality designation by electing not to mount
 28 a challenge promptly after the original designation is disclosed but before the

1 close of discovery.

2 6.2 Meet and Confer. The Challenging Party shall initiate the
3 dispute resolution process by providing written notice of each designation it is
4 challenging and describing the basis for each challenge. To avoid ambiguity as to
5 whether a challenge has been made, the written notice must recite that the
6 challenge to confidentiality is being made in accordance with this specific
7 paragraph of the Protective Order. The parties shall attempt to resolve each
8 challenge in good faith in accordance with the procedures set forth in Local Rule
9 37.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
11 without court intervention, the Parties shall follow the procedures set forth in
12 Local Rule 37 to obtain a decision from the Court. If one or both of the Parties
13 elect to file the Joint Stipulation required by Local Rule 37 under seal, the Parties
14 may file a stipulation to that effect or the Challenging Party may file an ex parte
15 application as to why the Joint Stipulation or portions thereof should be filed
16 under seal.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected
19 Material that is disclosed or produced by another Party or by a Non-Party in
20 connection with this case only for prosecuting, defending, or attempting to settle
21 this litigation. Such Protected Material may be disclosed only to the categories of
22 persons and under the conditions described in this Order. When the litigation has
23 been terminated, a Receiving Party must comply with the provisions of section 13
24 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving
26 Party at a location and in a secure manner that ensures that access is limited to the
27 persons authorized under this Order.

28 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

1 Unless otherwise ordered by the court or permitted in writing by the Designating
2 Party, a Receiving Party may disclose any information or item designated
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action,
5 as well as employees of said Outside Counsel of Record to whom it is reasonably
6 necessary to disclose the information for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
8 A;

9 (b) the officers, directors, and employees (including House Counsel)
10 of the Receiving Party to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to
14 whom disclosure is reasonably necessary for this litigation and who have signed
15 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial
18 consultants, mock jurors, and Professional Vendors to whom disclosure is
19 reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom
22 disclosure is reasonably necessary and who have signed the “Acknowledgment
23 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
24 Designating Party or ordered by the court. Pages of transcribed deposition
25 testimony or exhibits to depositions that reveal Protected Material must be
26 separately bound by the court reporter and may not be disclosed to anyone except
27 as permitted under this Stipulated Protective Order.

28 (g) the author or recipient of a document containing the information

1 or a custodian or other person who otherwise possessed or knew the information.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
3 IN OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other
5 litigation that compels disclosure of any information or items designated in this
6 action as “CONFIDENTIAL,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such
8 notification shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Protective Order. Such notification shall
12 include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party
16 served with the subpoena or court order shall not produce any information
17 designated in this action as “CONFIDENTIAL” before a determination by the
18 court from which the subpoena or order issued, unless the Party has obtained the
19 Designating Party’s permission. The Designating Party shall bear the burden and
20 expense of seeking protection in that court of its confidential material – and
21 nothing in these provisions should be construed as authorizing or encouraging a
22 Receiving Party in this action to disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced
26 by a Non-Party in this action and designated as “CONFIDENTIAL.” Such
27 information produced by Non-Parties in connection with this litigation is protected
28 by the remedies and relief provided by this Order. Nothing in these provisions

1 should be construed as prohibiting a Non-Party from seeking additional
2 protections.

3 (b) In the event that a Party is required, by a valid discovery request,
4 to produce a Non-Party's confidential information in its possession, and the Party
5 is subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the
8 Non-Party that some or all of the information requested is subject to a
9 confidentiality agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the
11 Stipulated Protective Order in this litigation, the relevant discovery request(s), and
12 a reasonably specific description of the information requested; and

13 (3) make the information requested available for inspection by
14 the Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from
16 this court in accordance with Local Rule 37, the Receiving Party may produce the
17 Non-Party's confidential information responsive to the discovery request. If the
18 Non-Party timely seeks a protective order in accordance with Local Rule 37, the
19 Receiving Party shall not produce any information in its possession or control that
20 is subject to the confidentiality agreement with the Non-Party before a
21 determination by the court. Absent a court order to the contrary, the Non-Party
22 shall bear the burden and expense of seeking protection in this court of its
23 Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
2 inform the person or persons to whom unauthorized disclosures were made of all
3 the terms of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the Receiving Parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order that provides for
13 production without prior privilege review. Pursuant to Federal Rule of Evidence
14 502(d) and (e), insofar as the parties reach an agreement on the effect of
15 disclosure of a communication or information covered by the attorney-client
16 privilege or work product protection, the parties may incorporate their agreement
17 in the stipulated protective order submitted to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the
20 right of any person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of
22 this Protective Order no Party waives any right it otherwise would have to object
23 to disclosing or producing any information or item on any ground not addressed in
24 this Stipulated Protective Order. Similarly, no Party waives any right to object on
25 any ground to use in evidence of any of the material covered by this Protective
26 Order.

27 12.3 Filing Protected Material. Without written permission from the
28 Designating Party or a court order secured after appropriate notice to all interested

1 persons, a Party may not file in the public record in this action any Protected
2 Material. A Party that seeks to file under seal any Protected Material must comply
3 with Civil Local Rule 79-5. Protected Material may only be filed under seal
4 pursuant to a court order authorizing the sealing of the specific Protected Material
5 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
6 request establishing that the Protected Material at issue is privileged, protectable
7 as a trade secret, or otherwise entitled to protection under the law. If a Receiving
8 Party's request to file Protected Material under seal pursuant to Civil Local Rule
9 79-5 is denied by the court, then the Receiving Party may file the information in
10 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by
11 the court.

12 13. FINAL DISPOSITION

13 Within 90 days after the final disposition of this action, as defined in
14 paragraph 4, each Receiving Party must either return all Protected Material to the
15 Producing Party or destroy such material. As used in this subdivision, "all
16 Protected Material" includes all copies, abstracts, compilations, summaries, and
17 any other format reproducing or capturing any of the Protected Material. Whether
18 the Protected Material is returned or destroyed, the Receiving Party should submit
19 a written certification to the Producing Party (and, if not the same person or entity,
20 to the Designating Party) by the 90 day deadline that verifies that all Protected
21 Material has either been returned or destroyed. If counsel who originally
22 designated the material as Protected Material does not receive that verification or
23 is unsatisfied with that verification, that counsel must within 30 days of the
24 expiration of the 90 day time period request in writing a verification that all
25 Protected Material has been returned or destroyed. Notwithstanding this
26 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
27 papers, trial, deposition, hearing transcripts, legal memoranda, correspondence,
28 deposition, trial exhibits, expert reports, attorney work product, consultant and

1 expert work product, even if such materials contain Protected Material. Any such
2 archival copies that contain or constitute Protected Material remain subject to this
3 Protective Order as set forth in Section 4 (DURATION).

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5 PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED.

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7 DATED: January 21, 2016



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United States District

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of
California on [date] in the case of *Rocha, et al. v. Penske Truck Leasing Co.,
L.P., et al.*, Case No. 5:15-cv-00736-R-KK. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of
this Order.

I further agree to submit to the jurisdiction of the United States
District Court for the Northern District of California for the purpose of enforcing
the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action.

I hereby appoint _____ [print or type full
name] of _____ [print or type full
address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____